

### **REMARKS**

Applicants respectfully request reconsideration. Claims 5-34 were previously pending in this application. By this amendment, claims 5, 10, 17, 22 and 25 have been amended. New claims 35-37 have been added. As a result, claims 5-37 are pending for examination with claims 5, 25 and 35 being independent claims. No new matter has been added. Applicants believe the pending application is in condition for allowance.

#### **Allowable Subject Matter**

Applicants gratefully acknowledge that claims 12 and 17 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. As discussed below, amended independent claim 5, from which claims 12 and 17 indirectly depend, is believed to be patentable for other reasons.

#### **Telephone Interview**

The February 9, 2006 telephone interview between Examiner Alexander and Applicants' representatives, Eric L. Amundsen and Robert E. Hunt, is made of record. The courtesies extended by Examiner Alexander during the telephone interview are gratefully acknowledged. Specifically, U.S. Patent No. 5,794,519 to Fischer was discussed during the interview with respect to the independent claims. The substance of discussions during the interview are incorporated into the following remarks.

#### **Claims 1-24**

Claims 5-11, 13, 18, 19 and 21-24 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,794,519 to Fischer. Claims 14-16 were rejected under 35 U.S.C. §103(a) as being unpatentable over Fischer in view of U.S. Patent No. 6,857,353 to Kollep et al. Claim 20 was rejected under 35 U.S.C. §103(a) as being unpatentable over Fischer in view of U.S. Patent No. 6,655,260 to Lazaris et al. These rejections are respectfully traversed.

Independent claim 5 has been amended to recite that an apparatus for forming a beverage comprises a lid and a receptacle having an opening to receive a beverage cartridge. The receptacle is movable relative to the housing between a vertical position and an inclined position in which the receptacle is accessible to insert or remove a beverage cartridge. In the inclined position, the receptacle opening faces in a direction away from the lid. As discussed during the interview, Fischer does not teach or suggest a receptacle having an opening that faces in a direction away from a lid when the receptacle is in an inclined position. Instead, as can be seen in Figure 5 of Fischer, an expeller implement (23) faces in a direction toward a lid (reference numeral 1 in Figure 4) when the expeller implement is in an inclined position. For at least this reason, claim 5 as amended is believed to be patentable, and notice to this effect is respectfully requested.

Each of claims 6-24 and 37 depends either directly or indirectly from independent claim 5, and is believed to be patentable for at least the reasons cited above for claim 5.

#### Claims 25-34

Claims 25-34 were rejected under 35 U.S.C. §102(b) as being anticipated by Fischer. These rejections are respectfully traversed.

Independent claim 25 has been amended to recite providing a beverage forming device having a housing with a receptacle accessible to a user, and moving the receptacle from a vertical position to a forwardly inclined position in which an opening of the receptacle to receive a cartridge faces away from a lid in an open position. Fisher does not teach or suggest moving a receptacle from a vertical position to a forwardly inclined position in which the opening of the receptacle to receive a cartridge faces away from a lid in an open position. When the lid of Fisher is in an open position (see Figure 5), expeller implement (23) faces toward the lid.

Each of claims 26-34 depends either directly or indirectly from independent claim 25, and is believed to be patentable for at least the reasons cited above for claim 25.

### New Claims

New claims 35 to 37 have been added. Independent claim 35 recites an apparatus for forming a beverage. The apparatus includes a housing adapted to support components of a beverage forming device, and a receptacle pivotable relative to the housing about a first axis between a vertical position and an inclined position in which the receptacle is accessible to insert or remove a beverage cartridge. The apparatus also includes a lid pivotable relative to the housing about a second axis between open and closed positions, the lid in the closed position cooperating with the receptacle in the vertical position to facilitate formation of a beverage when liquid is provided to the cartridge. The receptacle is pivotable about the first axis in a first direction toward the inclined position, and the lid is pivotable about the second axis in a second direction, different from the first direction, toward the open position.

New claim 35 is believed to be patentable at least because none of the applied references teaches or suggests the combination of features recited, including a receptacle being pivotable about a first axis in a first direction toward an inclined position, and a lid pivotable about a second axis between open and closed positions, the lid being pivotable about the second axis in a second direction, different from the first direction, toward the open position. As was discussed during the interview, for example, Fischer does not disclose that the lid and expeller are rotatable in different directions about respective axes toward the open and inclined positions. Instead, the lid and expeller rotate in a same direction when moving to the open and inclined positions.

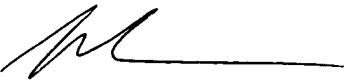
New claim 36 depends from independent claim 35 and is believed to be patentable for at least the same reasons as claim 35. New claim 37 depends from independent claim 5, and is believed to be patentable for at least the same reasons as claim 5.

**CONCLUSION**

In view of the foregoing amendments and remarks, this application should now be in condition for allowance. A notice to this effect is respectfully requested. If the Examiner believes, after this amendment, that the application is not in condition for allowance, the Examiner is requested to call the undersigned at the telephone number listed below.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, any necessary extension of time is hereby requested. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 23/2825.

Respectfully submitted,

By   
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